IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7013 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARSHOTTAM KALABHAI VANKAR (MAYAVANSI/VANKAR)

Versus

DIST.MAGISTRATE KHEDA

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Ms.Banna Datta, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 7-5-1999 passed by

respondent No. 1 - The District Magistrate, Kheda against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C on running page 17 interalia indicates that in all 9 prohibition cases were registered against the petitioner, out of which, 6 cases are registered at Thasara Police Station and three cases are registered at Nasahbandhi Police Station at Anand. That the said cases have been registered in between 12-9-97 to 20-3-99. Except the case registered vide C.R. No : 111/99 dated 20-3-1999, all the cases are pending for trial in the Court. That in each of the case, the country made liquor has been seized from the possession of the petitioner.

#. Over and above that four witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statements dated 25-3-1999, 27-3-1999, 28-3-1999 and 30-3-1999 respectively. That though the witnesses have not given the date of alleged incidents have specified time by giving reference from the date of recording their statement.

#. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as, the detaining authority while passing the impugned order, has failed to consider the less drastic remedy like cancellation of bail under Section 437(5) of CrPC though available and as such, the subjective satisfaction having been vitiated, the impugned order is invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that out of 9 cases, the petitioner has been released on bail in 8 cases registered against him except a case registered vide C.R.No : 111/99 dated 20-3-99. That the said case is pending for investigation and the petitioner has not been arrested till date as on the date of passing of impugned order. Under these circumstances, the detaining authority could have opposed the grant of bail or could have claimed cancellation of bail granted to the petitioner in any of the earlier case on the allegation that the petitioner is likely to repeat his anti social activities if not taken into custody. That the grounds of detention, does not indicate that any attempt was made to claim cancellation of bail under Section 437(5) of CrPC, hence, the impugned order could hardly be uphold.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-5-99 passed by respondent No. 1 - The District Magistrate, Kheda against the petitioner is hereby quashed and set aside. The petitioner - detenu - Parshottam Kalabhai Vankar (Mayavansi / Vankar) is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

#kailash#